

In the Matter of Mediation/Arbitration	:	NOV 26 1985
Between	:	
	:	AWARD
FOX POINT-BAYSIDE EDUCATION ASSOCIATION	:	WISCONSIN EMPLOYMENT
	:	Case RELATIONS COMMISSION
and	:	No. 30168
	:	MED/ARB-1847
JOINT SCHOOL DISTRICT NO. 2	:	Decision No. 22504-A
VILLAGES OF FOX POINT AND BAYSIDE	:	

I. NATURE OF PROCEEDINGS. This is a proceeding under Section 111.70 (4) (cm) 6 of the Municipal Employment Relations Act. The proceedings relate to an impasse over a 1982-1985 Agreement between the Fox Point-Bayside Education Association and Joint School District No. 2, Villages of Fox Point and Bayside. The Association filed a petition on July 26, 1982, with the Wisconsin Employment Relations Commission alleging an impasse on collective bargaining. The Commission staff member, Stephen Schoenfeld, met with the parties on October 12, 1982, December 6, 1982, and January 15, 1983. The parties however submitted on March 21, 1985, their final offers. On April 2, 1985, the Commission reported its conclusion that the parties' procedures substantially complied with the statute requirements prior to mediation-arbitration, that they were at an impasse, and that the conditions precedent to the initiation of mediation-arbitration had been met, and the Commission ordered mediation-arbitration. The parties having selected Frank P. Zeidler, Milwaukee, as mediator-arbitrator, the Commission appointed him on April 9, 1985. Mediation took place on June 20, 1985, and all issues but one were resolved. Hearings on the remaining issue were held on June 24, 1985, and on August 21, 1985. Briefs and reply briefs were filed, the latter being received by the mediator-arbitrator on October 18, 1985.

II. APPEARANCES.

PATRICK A. CONNOLLY, Executive Director, North Shore United Educators, appeared for the Association.

LINDNER & MARSACK, S.C., by ROGER E. WALSH Esq., appeared for the District.

III. THE ISSUES.

A. The Association offer:

"REVISED FINAL OFFER OF THE
FOX POINT/BAYSIDE EDUCATION ASSOCIATION
JUNE 24, 1985

"8.3 Selection for Reduction

"8.3.1 In the implementation of staff reductions under this Article, individual teachers shall be selected for full or partial layoff in accordance with the following steps:

"Step 1 Normal attrition resulting from teachers retiring or resigning and part-time teachers will be relied upon to the extent it is administratively feasible in implementing layoffs.

"Step 2 Selection: The Board shall select full-time teachers or partially laid off teachers (teachers who were once full-time teachers but have been reduced to less than a full-time assignment) for a reduction in the order of the teacher(s)' length of service in the District, commencing with the teacher in the District with the shortest service. Provided, however, that where the Board determines for just cause that the selection of a particular teacher for layoff solely upon the basis of seniority would not be in the best interests of the District because such teacher's selection would jeopardize the continuation of a program involving students which the Board wishes to retain or its having a certified teacher for such a program, the Board may exempt such teacher from the application of this Step and retain him/her in the District's employ while proceeding to layoff other teachers with greater length of service."

B. The District final offer:

"REVISED FINAL OFFER OF THE
FOX POINT/BAYSIDE SCHOOL BOARD
JUNE 24, 1985

"8.3 - Selection for Reduction.

"8.3.1. In the implementation of staff reductions under this Article, individual teachers shall be selected for full or partial layoff in accordance with the following steps:

"Step 1. The Board shall select teachers for a reduction based on the following considerations:

"qualifications, professional attitude and conduct, properly certified, professional competence, performance and experience.

"If all of the above considerations are equal, the Board's decision will be based on the inverse order of service in the District.

"During the term of this Agreement, the above considerations, excluding 'properly certified,' will be determined by application of the 'Role of the Teacher' evaluation program and such considerations of two (2) or more teachers will be construed to be 'equal' if the point score of such teachers are within two (2) standard deviations above or below the mean score of all teachers in the bargaining unit. Further, such considerations of two (2) or more teachers who are not within two (2) standard deviations above or below the mean score of all teachers in the bargaining unit will be construed to be 'equal' if the point score of such teachers are within any succeeding two (2) standard deviations from the above limits, e.g., within the third (3rd) and fourth (4th) standard deviation, or within the fifth (5th) and sixth (6th) standard deviation, etc. The computation of one (1) standard deviation and an example of the above construction is listed on Appendix F, attached hereto. For purposes of the above constructions, the point scores of the teachers will not include the computation for 'Years of Service' included in the 'Role of the Teacher' evaluation form.

"The inverse order of service in the District may be bypassed and/or a partial reduction may be utilized, even if it results in two (2) or more part-time positions, if, in the opinion of the Board, such is needed to continue a program or to maintain continuity of a program at a specific school.

"APPENDIX F

COMPUTATION OF ONE (1) STANDARD DEVIATION
AND
EXAMPLE OF CONSTRUCTION OF 'CONSIDERATIONS ARE EQUAL'

"A. COMPUTATION OF ONE (1) STANDARD DEVIATION.

"Step 1: Compute the arithmetic mean of all teachers' point scores, i.e., the sum of each teachers' point score divided by the total number of teachers with point scores.

"Step 2: Compile a list of each separate point score that is credited to one or more teachers; subtract each such point score from the arithmetic mean; square the remainder; multiply the square times the number of teachers with that point score; add all the resulting products; and then divide the sum by that number which is one (1) less than the total number of teachers with point scores. The square root of that remainder is one (1) Standard Deviation.

"Example:

"a) Assumed point scores of all teachers:

<u>Point Score</u>	<u>Number of Teachers With that Point Score</u>
95	30
94	16
93	8
92	1
91	3
90	2
89	1

"b) Computation of Arithmetic Mean:

95 x 30 =	2,850
94 x 16 =	1,504
93 x 8 =	744
92 x 1 =	92
91 x 3 =	273
90 x 2 =	180
89 x 1 =	89

$$5,732 \div 61 = 93.967$$

"c) Computation of Standard Deviation:

<u>Point Score</u>	<u>- Arithmetic Mean</u>	<u>Remainders</u>	<u>Square X</u>	<u>Number of Teachers with Point Score</u>	<u>= Products</u>
95	- 93.967	= 1.033	1.0671	x 30	= 32.0130
94	- 93.967	= .033	.0011	x 16	= .0176
93	- 93.967	= - .967	.9351	x 8	= 7.4808
92	- 93.967	= - 1.967	3.8691	x 1	= 3.8691
91	- 93.967	= - 2.967	8.8031	x 3	= 26.4093
90	- 93.967	= - 3.967	15.7371	x 2	= 31.4742
89	- 93.967	= - 4.967	24.6711	x 1	= 24.6711
					125.9351

$$125.9351 \div 60 = 2.0989$$

$$\sqrt{2.0989} = 1.4488 \text{ (One Standard Deviation)}$$

"B. EXAMPLE OF CONSTRUCTION OF 'CONSIDERATIONS ARE EQUAL'.

<u>Point Scores of Teachers</u>	
95	96.8646 } two (2) standard deviations (i.e., (2.8976) above the arithmetic mean.
94	
(mean) 93.967	} two (2) standard deviations (i.e., below the arithmetic mean.
93	
92	91.0694 } third and fourth standard deviations.
91	
90	
89	88.1718 } fifth and sixth standard deviations

- "1. If the layoff decision involves properly certified teachers with point scores from 91.0694 to 96.8646 (two (2) standard deviations above and below the mean), such teachers will be construed to have equal considerations and the decision will be based in the inverse order of service in the District.
- "2. If the layoff decision involves a properly certified teacher with a point score of 91.0694 or above, and a properly certified teacher with a point score below 91.0694, the latter teacher will be laid off, regardless of seniority.
- "3. If the layoff decision involves properly certified teachers with point scores of at least 88.1718 but below 91.0694 (third and fourth standard deviations), such teachers will be construed to have equal considerations and the decision will be based on the inverse order of service in the District.
- "4. Decisions involving teachers with point scores within the fifth and sixth standard deviations (i.e., at least 85.2742 but below 88.1718) will be handled as in Paragraph 3 above, and decisions involving a teacher in the third and fourth standard deviation and a teacher in the fifth and sixth standard deviation will be handled as in Paragraph 2 above, with the latter teacher being laid off. (Note: The same applies to teachers in any succeeding two (2) standard deviations.)"

IV. STIPULATIONS. Because agreed to provisions of the parties have a bearing on the issues, these agreed to provisions are given here.

"FOX POINT/BAYSIDE SCHOOL DISTRICT
AND FOX POINT/BAYSIDE EDUCATION ASSOCIATION

AGREED PROVISIONS JUNE 20, 1985

"The attached provision shall be a new article incorporated into the 1982-1985 Collective Bargaining Agreement between the Fox Point-Bayside School Board and the Fox Point-Bayside Education Association replacing the Fox Point-Bayside School District Memorandum of Understanding found at page 30 of that Agreement. The provisions of this new article shall become effective on the date of the arbitrator's decision in this matter, but shall not govern any layoff for which notice had been given prior to the date of the arbitrator's decision. This provision shall be Article VIII, and the remaining articles shall be renumbered accordingly.

"FOX POINT/BAYSIDE SCHOOL DISTRICT
AND FOX POINT/BAYSIDE EDUCATION ASSOCIATION

AGREED PROVISIONS JUNE 20, 1985

ARTICLE VIII - STAFF REDUCTION

"8.1- Policy. In the event the Board determines to reduce the number of teacher positions (full layoff) or the number of hours in any position (partial layoff), the provisions set forth in this Article shall apply. Layoffs shall be made only for the reason(s) asserted by the Board, and not to circumvent the other job security or discipline provisions of the Agreement.

"8.2 - Layoff Notices and Timelines.

"8.2.1. Prior to implementing any layoff(s), the Board shall notify the Association in writing of the position(s) which it is considering for reduction.

"8.2.2. The Board shall provide preliminary notice in writing no later than April 1 to all teachers selected for full or partial layoff for the ensuing school year. The Board shall provide the teachers so selected with an opportunity for a private conference with the Board. After the opportunity for the private conference, and in no event later than May 1, the Board shall provide a final notice to those teachers it has selected for full or partial layoff. The layoff of each teacher shall commence on the date that he or she completes the teaching contract for the current school year. The Board shall simultaneously provide the Association with copies of all layoff notices which it sends to teachers pursuant to this Section.

"8.2.3. Any teacher so notified may, within ten (10) days of the initial notice:

- "(a) Apply for a one year leave of absence without compensation; or
- "(b) Apply for Voluntary Incentive Program for Early Retirement (VIPER) pursuant to Section 6.6.4 of the Contract (the December 31 filing date will be waived); or
- "(c) Apply, together with another certified full-time tenured teacher, for job sharing assignment pursuant to Section 6.4 of the Contract.

"It is the intention of this Section that teachers utilize Leave of Absence, Voluntary Incentive Program for Early Retirement, Job Sharing and Trial Retirement where possible in order to avoid layoffs. Management will make a good faith effort to accommodate professional staff through the intradistrict transfer of certified personnel.

"8.3 - Selection for Reduction.

* * *

"PROVISION IN DISPUTE"

"Step 2 - Refusal of Partial Layoffs. Any teacher who is selected for a reduction in hours (partial layoff) under Step 1, and who is not able to retain a substantially equivalent position to that which the teacher held at the time of layoff, may choose to be fully laid off, without loss of any rights and benefits as set forth in Sections 8.4 and 8.5 below for fully laid off teachers.

"8.3.2. For purposes of this Article, the commencement of a teacher's service in the District shall be the first day of continuous full-time employment under his/her initial Contract and, where two (2) or more teachers began employment on the same day, the respective dates upon which the Board offered such teachers employment shall be used to establish their length of service, provided that if there still remain two (2) or more teachers subject to layoff selection who were offered employment on the same date, such selection shall be determined among such teachers on a lottery basis. For purposes of this Article, a teacher's service in the District shall not include any period of time in which the teacher has worked for the District in a non-bargaining unit capacity after March 1, 1985, nor any school semester or term after the first summer during which a teacher is fully laid off, or any time spent on a fully unpaid leave of absence of one (1) semester or more. The service of partially laid off teachers who have been laid off from full-time employment, and teachers on a job sharing assignment pursuant to Section 8.2.3 shall be considered continuous full-time employment for purposes of determining service in the District under this Article. Teachers initially employed as part-time teachers shall not accrue service in the District until such time as they become employed by the District as full-time teachers.

"8.3.3. No later than December 1 of any school year, the Board and the Association shall develop a mutually agreeable list of years of service in the District, which shall rank all teachers, including both active teachers (full-time, partially laid off, and part-time) and teachers on full layoff, according to their length of service in the District, as determined above. Such list shall also state the teaching assignments, if any, presently held by such teachers, the areas in which such teachers are certified, and the layoff date of all teachers on layoff.

"8.4 - Recall:

"8.4.1. If the District has a vacant position or a portion of a position available for which a laid off teacher is certified according to the District's records, the teacher shall be notified of such position and offered employment in that position, commencing as of the date specified in such notice. Under this Section, teachers on layoff will be contacted and recalled for a position in reverse order of their layoff. In the event two (2) or more teachers who are so certified were laid off on the same date, the Board shall select the teacher who has the longest service in the District as determined under Section 8.3.2 above.

"8.4.2. Recall rights under this Section shall extend to teachers on partial layoff.

"8.4.3. Within fourteen (14) days after a teacher receives a notice pursuant to this Section, he or she must advise the District in writing that he or she accepts the position offered by such notice and will be able to commence employment on the date specified therein. Any notice pursuant to this Section shall be mailed by certified mail, return receipt requested, to the last known address of the teacher in question as shown on the District's records. It shall be the responsibility of each teacher on layoff to keep the District advised of his or her current whereabouts. The Board shall simultaneously provide the Association with copies of any recall notices which are sent to teachers on layoff status pursuant to this Section.

"8.4.4. Any and all recall rights granted to a teacher on layoff pursuant to this Article shall terminate upon the earlier of (i) the expiration of such teacher's recall rights period, or (ii) such teacher's failure to accept within fourteen (14) days an offer of recall, as provided in this Section, to a substantially equivalent position to that from which the teacher was laid off. For purposes of this Article, the term 'teacher's recall rights period' is three (3) years following the teacher's most recent full layoff, the three (3) year period ending on the first day of the fourth school year after such layoff. Partially laid off teachers shall have a continuous recall rights period while on partial layoff.

"8.4.5. A teacher on full layoff status may refuse recall offers to a part-time position which is not a substantially equivalent position, or to substitute or other temporary employment without loss of rights to the next available full-time position for which the teacher is certified. Teachers on layoff status shall not lose rights to a full-time position by virtue of accepting such part-time or substitute appointments with the District.

"8.4.6. No new or substitute appointments may be made by the District while there are teachers who have recall rights who are available and certified to fill the vacancies.

"8.5 - Benefits During Layoff.

"8.5.1. In the event the Board fully lays off a teacher, the Board shall continue to provide the teacher with all group insurance program benefits as provided to teachers under this Collective Bargaining Agreement through the month of June following the layoff notification.

"8.5.2. Teachers on full layoff will, commencing July 1 following the layoff notification, be eligible for inclusion in all of the District's group insurance programs, to the extent such policies allow their eligibility, provided the laid off teacher reimburses the District for the full premium for such coverage. Such eligibility shall continue while the teacher is on layoff status, except that it shall be suspended while the teacher is employed on a full-time basis for another employer.

"8.5.3. Teachers on full layoff shall retain the same amount of service in the District as set forth in Section 8.3.2 above, as she or he had accrued as of the date she or he was laid off. If a laid off teacher is recalled, such teacher shall again begin to accrue full service in the District.

"8.5.4. Teachers on full layoff shall retain the amount of sick leave they had accrued as of the date she or he was laid off, and, if she or he is recalled, shall again begin to accrue sick leave.

"8.5.5. Partially laid off teachers, who were laid off from full-time or part-time employment, shall receive benefits granted part-time teachers pursuant to Section 6.1.

"8.5.6. No teacher on full or partial layoff shall be precluded from securing other employment while on layoff status.

"8.6 - Definition of 'Certified.' For purposes of this Article, 'certified' means certified by the Wisconsin Department of Public Instruction at the time the person is to begin the new assignment, if such certification is required for the position. If DPI certification is not required for the position, 'certified' shall mean prior experience of more than two (2) years in the assignment or position, or, if such experience is lacking, able to perform the assignment in the opinion of the Board.

"8.7 - Definition of 'Substantially Equivalent Position.' For purposes of this Article, 'substantially equivalent position' means a full-time equivalent position which is not less than eighty percent (80%) of the full-time equivalent position at which the teacher was employed at the time of layoff.

"8.8 - Grievance Procedure. If a teacher and/or the Association wishes to challenge the Board's actions in laying off employees, a grievance may be filed beginning at the District Administrator level, STEP FOUR, of the Grievance Procedure under this Agreement, no later than ten (10) days (as defined in Section 7.1.4) after receiving final notice of layoff under Section 8.2.2 above."

V. FACTORS CONSIDERED.

Section 111.70 (4) (cm) 7 of the statutes requires the mediator-arbitrator to weigh the following factors:

- a. The lawful authority of the municipal employer.
- b. Stipulation of the parties.
- c. The interests and welfare of the public and the financial ability of the unit of government to meet the costs of any proposed settlement.
- d. Comparison of wages, hours and conditions of employment of the municipal employees involved in the arbitration proceedings with the wages, hours and conditions of employment of other employees performing similar services and with other employees generally in the public employment in the same community and in comparable communities and in private employment in the same community and in comparable communities.
- e. The average consumer prices for goods and services, commonly known as the cost-of-living.
- f. The overall compensation presently received by the municipal employees, including direct wage compensation, vacation, holidays and excused time, insurance and pensions, medical and hospitalization benefits, the continuity and stability of employment, and all other benefits received.
- g. Changes in any of the foregoing circumstances during the pendency of the arbitration proceedings.
- h. Such other factors, not confined to the foregoing, which are normally or traditionally taken into consideration in the determination of wages, hours and conditions of employment through voluntary collective bargaining, mediation, fact-finding, arbitration or otherwise between the parties, in the public service or in private employment.

VI. BACKGROUND. This is a one issue case involving layoff policy. The extensive history of the evolution of the layoff policy requires a summary of the background leading to the present offers. The parties recite this background in arguments for their offers.

Prior to 1980, the Board had a policy that tenured teachers would be laid off according to seniority as stipulated by Statutes 118.23 (4) (Bd. Ex. 1). This statute provides that in school districts lying entirely and exclusively in a county of 500,000 population or more, the district may lay off teachers only in inverse order of appointment (B-49). Fox Point-Bayside is not such a district since it lies in part of two counties (A-4),

but layoff by seniority was the Board policy found in its policy statement only. The 1977-79 agreement between the parties provided only for removal of a tenured teacher for incompetency, inefficiency, or immorality, for willful and persistent violation of reasonable regulations of the governing body of such school, necessary reduction of staff or for other good and just cause, upon written charges based on fact (B-2).

On February 20, 1979, the Board adopted a revised statement in the policy manual, which was as follows:

"When it becomes necessary to reduce staff because of enrollment decline, elimination or modification of educational programs or economic necessities, teachers will be non-renewed, refused employment, dismissed, removed or discharged by the Board on the following considerations:

"Qualifications, professional attitude and conduct, proper certification, professional competence, performance and experience.

"If all the above considerations are equal, the Board's decision will be based on the inverse order of service in the District. In lieu of, or in addition to nonrenewal, dismissal, removal or discharge, the Board may shorten full-time contracts to part-time assignments. The selection of those teachers affected will be based on considerations listed above."

It was reported that a petition to effect a change had been signed by 42 citizens. This policy was to become effective July 1, 1979. This provision became Section 6.2.4 (d) of the policy manual (B-3).

In the 1979-82 agreement between the parties, the provisions of the previous agreement for removal for good and just cause was retained. However there was attached to the new agreement a Memorandum of Understanding which included among other things, the following:

"1. The School Board will give the teacher or teachers who it is considering selecting for staff reduction under the revised policy, notice of such prior to the time they would otherwise be required to be notified in such case.

"2. Any teacher so notified may, within ten days (10) of the notice stated in paragraph 1:

"(a) Apply for a one year leave of absence without compensation, or

"(b) Apply for Voluntary Incentive Program for Early Retirement (VIPER) pursuant to Section 6.6.4 of the contract (the December 31 filing date will be waived), or

"(c) Apply, together with another qualified and certified full-time tenured teacher for job sharing assignment pursuant to Section 6.4 of the contract, or

"(d) Apply for layoff without compensation with recall rights up to three years or the employee's length of service in the School District whichever is shorter, provided however that such layoff shall not commence until the following September 1st.

"3. In the event a teacher so notified objects to his/her selection under the revised policy, such teacher must within three days (3) of receipt of the notice provided for in paragraph 1 above, inform the Superintendent in writing of the objection.

"If such teacher desires a hearing on the matter before the School Board, a written request therefore must be included with the objection to the Superintendent. If such hearing is requested, it will be held within fifteen days (15) of receipt of the request. Failure to file an objection with the Superintendent or to request a hearing before the School Board as provided above shall constitute a waiver of any objection and/or any hearing.

"4. Wherever used in this memorandum the term 'days' shall mean days when school is in session.

"5. It is the School Board's preference not to have to make a selection under the new policy, but rather to have the professional staff self-regulate as to size through the negotiated options such as Leave of Absence, Voluntary Incentive Program for Early Retirement, Job Sharing and Trial Retirement.

"6. Management will make a good faith effort to accommodate current, professional staff through the intradistrict transfer of qualified and certified personnel." (B-4)

In the 1979 negotiations, the Association sought to reestablish seniority but was not successful, but a Memorandum of Agreement was included in the agreement on how the Board policy would be applied. The District contends that it made in exchange for this memorandum substantial improvements in the Voluntary Incentive Program for Early Retirement (VIPER) (B-45).

At the time of the change in the Board policy teachers had expressed concern about the evaluations under the policy being biased and that there would be no protection from capricious decisions, but the Board asserted that the policy was long standing. However it would consult with the teachers on policy change. (B-3)

In the fall of 1980 certain teachers were advised that they could be laid off. The Superintendent, Dellmont R. Lindblom explained at a faculty meeting that the Board might have to lay off certain teachers and was placing a lower premium on seniority and emphasizing competence, performance, attitude and conduct.

This brought a response from the Association itself to the Board itself stating that the Board had ignored or sidestepped its promise to afford fair and equitable protection from arbitrary and capricious action. This was because the decisions under which teachers were to be laid off were not known. The teachers had been placed in an "average" category and by so being placed were in line for non-renewal. (B-6).

There had been an evaluation system for teachers, known as "The Role of the Teacher", and the Board then decided to have an "audit" of this system. It engaged the firm of Barnhill-Hays whose principal representative on the task was Cynthia C. Stevens, Vice President. Stevens then studied the evaluation system and interviewed, among others, members of the teaching staff. (B-6 to 10). Thereafter Stevens issued a report in which she voiced certain criticisms of the "Role of the Teacher" document as having format ambiguity problems, primarily with respect to phraseology. She noted in the report, among other things, that the evaluation document was to be used for "improvement" and "layoff availability determination." This report of Dr. Stevens contained many suggestions for changes.

A "Role of the Teacher" committee was established. A Professional Personnel Evaluation Plan document was to be prepared expressing Board policy, classroom observations by administrators were to be carried on, and a "NEAT" procedure for identifying teachers with "deficits" and aiding in the correction of deficits was established.

A Classroom Observation Form was created with 57 point total for the observations (e.g. Assn. 0-2). A Self-Evaluation form was created with a total of 107 points for various attributes of the teacher. It had a column for the administrator to award points for each attribute and for the teacher to award points as a self-evaluation, so that the two totals could be compared (e.g. Assn. 0-2).

This latter evaluation form had as major titles: "Relationship With Pupils", "Professional Skills", "Motivating and Challenging Students", "Recognition of Individual Differences", "Daily Lesson Plans", "Skill in Communications", "Professional Growth", "Relationship With Building Staff", and "Relationships With Parents" for a total maximum of 95 points. It also had a category "Years of Service" with a maximum point value of 12, with two points being awarded for every five years of local continuous teaching experience.

The teachers had an input into the formation of these documents through a "Role of the Teacher" committee, with elected teachers representing members and through various surveys of the teacher opinions. The Role of the Teacher committee functioned from 1980 to the present, and the documents of their actions reveal that while they endorsed the "Role of the Teacher" documents for evaluation, they did not favor their use for non-renewal. They reported that their participation in the process had been too favorably stated. (B-17).

The Superintendent reported in September 11, 1984, that a survey of the teachers about the items on the self-evaluation form showed that only four items on the self-evaluation form had received less than a 70% approval, and one of these items was the item on Years of Service which was approved by only 58% of the teachers. (B-26)

On January 8, 1985, the Superintendent informed all faculty of the notification of one third of the faculty in the area of their licensure of their status in this lower one third. He was doing this after the teachers by a vote of 32 to 13 had favored such notification. He reported that no teacher was placed under the "NEAT" procedures. (B-30). Teachers continued to be concerned about the process in many aspects, including when rebuttals could be made, and whether averaging should take place over some years. (B-31).

Teachers also had concerns about whether the classroom observations would be made by one or more administrators and when, and about what to do about different scores which came from the administrators, and what to do about extra credit. (Tr. I, 25-27)

The Classroom Observation Form was constructed to give the teacher maximum credit and to have the administrator prove through documentation where points should be deducted. (Tr. I, 28, 29). A member of the Role of the Teacher committee, Teacher Reddemann, stated that the teachers never wanted the document to be used to lay off teachers, but knew that at some time it might be.

The classroom observation was to be made by one administrator on one visit, although there had been occasions where more than one administrator made the observation. When the latter happened, the point evaluation between the observations may have varied by 5 or 6 points (Tr. I, 45).

The 1983-84 classroom observation had a total of 107 points of which 95 were related to teaching activities and qualities and 12 to years of service. For 61 teachers the range of scores went from 107 to 91. For example, four teachers received 107 points; two 106 points; ten received 105 points at the top end; and two received 94 points, one 93 points, and

It is the contention of the District that the years of service score has too much of a weight in determining qualifications, and this factor should be reduced as proposed in the District offer where seniority will pay a role only after scores without it have been made.

As seen from the District offer, the District proposes to group all persons within a range of two standard deviations of the mean of scores into one of three such groups and apply seniority within these groups. The groups are the 5th and 6th standard deviations below the mean, the 3rd and 4th standard deviations below the mean, and the 1st and 2nd standard deviations below or above the mean. The District, through an expert witness, Prof. Swarnjit Arora, contends these groups represent similar populations. (Tr. II, 386).

The Association analyzed the application of the formula to the 1983-84 scores in classroom observation minus years of service points. The mean was 93.967 and the standard deviation was 1.4488. 30 teachers had a score of 95, 16 had 94, 8 had 93, 1 had 92 - 55 teachers in the highest group. 6 teachers had scores that put them in the group of the 3rd and 4th standard deviation. (A-Q 5)

In 1984-85 the mean score was 94.8947. One standard deviation below produced a score of 94.5319 and two standard deviations below brought a score of 94.1691. 54 teachers had a 95 score, 4 teachers had a 94 score and 1 had a 93 score. Using the formula all teachers with the score of 94 fell into the 3rd standard deviation, and the teacher with a 93 score fell into the 6th standard deviation. (A-Q 6)

This difference of one point which could arise from one unfavorable classroom on one occasion might thus expose a senior teacher to layoff.

The testimony at the hearing from several teachers on points deducted from their scores from one classroom observation reveals their anxiety about such a system of evaluation, and their readiness to try to get back deducted points, and their opposition to the system of evaluation. (Tr. I, 84-202).

Concerning matters relating to layoff, the District has a Voluntary Incentive Program for Early Retirement (VIPER) under which senior employees would get a cash payout over a period of time for retiring early. (B-45) The contention of the District is that this is a better plan than plans in other districts in the area. (Tr. II, 330). The District hopes that the faculty will "self-regulate" its own members by the use of this plan or position sharing so that the layoff provision need not be applied.

The District states that under its new policy there has been no use of the layoff policy since 1979-80 and that the faculty used other methods to "self-police" themselves (Tr. II, 317).

The District projects an increase in enrollment to 1987-88, but the number of homeroom staff persons might be reduced by one. However, this will not result in layoff, because of retirement (B-46) (Tr. II, 319, 320). The Board currently has a mature staff with teachers looking to retirement, and an enrollment increase is expected in 1988 and 1989 so that no layoffs are anticipated by the District Business Manager in the next five years (Tr. II, 323, 324).

However one member of the Board has indicated strongly that he wants to eliminate a program known as individual guidance education (IGE) with perhaps the elimination possibly of three to five teachers (Tr. II, 326).

In the hearing teachers objected to point deductions in their scores for various situations. A student, unknown to the teacher, made a face at a teacher behind his back (Tr. I, 511). Too many people left the class for the library (Tr. I, 521). Students talked behind a teacher's back while he was at the chalkboard (Tr. I, 88). No reading occurred in a reading class when it reviewed a story just finished (Tr. I, 102).

There was an empty bulletin board while changes in assignment were being made (Tr. I, 63). In the latter two cases, points were restored after a conference with the Principal (Tr. I, 104). Points were reduced after a teacher became the subject of parent wrath for his method of asserting discipline, but these points also were restored (Tr. I, 111).

A point was removed because too many children came up for comments, questions, or re-directions after a lesson (Tr. I, 145). Points were deducted from a teacher's score, because she had a coffee cup on her desk and used the word "stuff" three times (Tr. I, 156, 157). A point was deducted because people in an arts and crafts class were talking (Tr. I, 178). Another point was deducted because a paper mache horsehead was not ready for a dress rehearsal when the teacher was sick on this day (Tr. I, 182). A point also was deducted for lack of a lesson plan, and another for conducting an examination in a classroom with a room divider where in the other section an historical movie was being shown (Tr. I, 194, 197).

VII. **LAWFUL AUTHORITY.** In the matter of the lawful authority of the government, the arbitrator perceives no impediment to the adoption of either offer.

VIII. **STIPULATIONS.** This matter relates to a three year contract which already expired on or about June 30, 1985. All other matters in the contract have been stipulated to, and the parties have agreed that the terms of whatever offer here are likely to be accepted in the successor agreement.

IX. **COMPARABILITY OF SIMILAR AGENCIES.**

A. Section 118.23, Stats., states that in a school district lying entirely and exclusively in a county having a population of 500,000 or more, teachers may be laid off only in inverse order of appointment (B-49). The Fox Point-Bayside District lies in both Milwaukee and Ozaukee Counties. The Association however asserts that the comparables are districts in the area, especially the Nicolet High School, which also lies in two counties, and two feeder districts, the Glendale-River Hills District, and the Maple Dale-Indian Hill District. Fox Point-Bayside is also a Nicolet feeder.

In Glendale and Maple Dale layoff is by seniority and within the area of certification (A-K1, K2). At Nicolet there is a more complex procedure, but layoff is by seniority except that on just cause the Board can determine that an employee to be laid off solely on the basis of seniority would not be in the best interests of the district, jeopardizing the continuation of a program (A-K3).

The Association also supplied in support of its position the contracts of thirteen Milwaukee County school districts, and in each of these districts layoff was by applying a combination of seniority and certification. The term "qualification" was used in some contracts, but it was defined to mean certification (A-L1 to L13). Contract durations were as follows:

1981-84	Brown Deer
1980-83	Franklin
1982-84	South Milwaukee, St. Francis
1983-84	Shorewood
1983-85	Wauwatosa, West Allis-West Milwaukee, Whitefish Bay, Whitnall
1984-85	Cudahy, Greendale
1984-86	Greenfield
1984-87	Oak Creek-Franklin

The Association provided exhibits from 9 school districts in various counties but with nearby locations. These are in the Braveland Athletic Conference. 8 of these used the principles of seniority and qualification, and one, Menomonee Falls, used a seniority system modified by a system of securing "credits" to develop an index used for layoff. Contract durations were as follows:

1981-82 Cedarburg
1983-85 Elmbrook, Grafton, Menomonee Falls, Grafton, Mequon-
Thiensville
1984-85 Germantown, Port Washington
1984-86 Hamilton

B. Association Position on Comparability Summarized. The Association asserts that the primary comparison districts are the Nicolet area districts. It notes the common interest of the people in Fox Point, Bayside, River Hills and Glendale, who although they are served by various elementary districts, have a common secondary school. It notes that other arbitrators have found these districts to be the most comparable. In three of the four districts there is a seniority-based layoff.

The Association asserts that the Milwaukee County school districts are the next most important comparison districts. The third comparison group is the Braveland conference, and all of these districts have seniority-based layoff provisions.

C. District's Position. The District notes that within Milwaukee County, the strict seniority system is mandated by the statute, so that the contract provisions in those areas were not found in voluntary bargaining. The Fox Point-Bayside provisions are unique and have existed since 1979 and were obtained by the District through substantial concessions to encourage self-regulation and should therefore not be changed. The District cites Arbitrator Vernon to this effect.⁽¹⁾

While the comparables in the Nicolet area and its feeder schools favor the Association offer, they had no choice in the matter because of the statute. In the Nicolet case, the arbitrator imposed the system of seniority, because it was more comparable, and because the district had not negotiated the matter of its considerable control over layoffs to establish qualitative judgments on which to base them. In Fox Point-Bayside the Board did seriously consider qualitative judgments, and therefore the decision of Arbitrator Fleischli in the River Hills matter supports the District's position.⁽²⁾

In the case of the secondary comparables, Nicolet and West Allis-West Milwaukee, these districts are not under the statutory provision, whereas the other 10 districts cited by the Association are, but what West Allis-West Milwaukee got in return for its provision which was negotiated, is not known.

In the case of the third group, the Braveland conference, Cedarburg and Menomonee Falls do not use straight seniority.

The District states that the comparability factor should not be applied so mechanically that if a mere majority of the contracts contain a provision, the party proposing it automatically wins. If the arbitrator looks at the other factors here, the Association argument on comparables vanishes.

D. Discussion. The evidence is that whatever the source of the origin of a provision, whether by bargaining, statute, or award, the provision of layoff of the Association is supported by the comparables.

X. OTHER FACTORS. The statutory criteria of cost of living, total compensation, and overall compensation have not been argued in any major way by the parties. However the parties do address the interests and welfare of the public, and certain arbitral policies and practices. These will be addressed now.

(1) Waupun School District, Dec. No. 21862 - May, 1985.

(2) Nicolet High School District, Dec. No. 19460-A, G. Fleischli, Arb. (1982) (A-H).

XI. INTEREST AND WELFARE OF THE PUBLIC AND ARBITRAL PRINCIPLES.

A. Association's Position Summarized. The Association argues that seniority-based layoff may promote public education more effectively than performance-based layoff and submitted a document, "Seniority Rules and Educational Productivity - Understanding the Consequences of a Mandate for Equality" by Richard J. Murnane, Institute for Research on Educational Finance and Governance, School of Education, Stanford University, 1980. (A-G). This document argues that performance-based layoffs "caused such a debilitating reduction in morale and productivity that the districts discontinued the policy after only a short time"; and conversely, "That contracts that base the compensation and job security of teachers on seniority may promote the goals of public education more effectively than performance-based contracts."

The Association argues that the District system currently uses a seniority based system of compensation, and so the Employer cannot argue that straight seniority is not an appropriate measurement of the worth of teacher-employees. The Employer's evaluation program as applied by the administration cannot be considered a measurement of performance equal to or superior to the already established application of years of experience.

The number of contract layoff provisions based on seniority indicates that the public has demonstrated that its interest and welfare are best served by such provisions.

The Association argues that there is a possibility of a layoff of 8 or 9 percent of the work force, because of a goal of a Board member to eliminate the LGE program. This fact coupled with curriculum uncertainty creates the need for a seniority-based layoff.

The Association states that the District proposal does not contain a layoff procedure which can be enforced under the contract. The procedure is based on an observation evaluation mechanism of the District to place teachers into groups in which they are considered equal for layoff. The District uses standard deviation to give the proposal an appearance of statistical validity. The problem is that the teacher will have no recourse except personal bargaining with the evaluator to affect his or her score. The present evaluation program will be changed, and the Employer could change it in an infinite variety of ways, including changing point scores.

The Association states that the District proposal eliminates effectively any use of seniority, because it has a provision allowing it to bypass the inverse order of service and use a partial reduction plan ostensibly in order to continue a program or to maintain continuity of programs in a specific school, but written in such a way to allow seniority to be bypassed if the Board thinks this is needed. No layoff provision contained in any of the contract language in evidence gives a Board such latitude.

The Association states that the evaluation program itself is not in the provisions of the collective bargaining agreement and not in the Employer's final offer. It states that even if the Employer had a perfect measurement of performance, the proposal ought to be rejected under criteria

The Association also claims that the evaluators were not properly trained. Points have been deducted for trivial, inappropriate or other unjustified reasons.

The Association states that the history of the use of evaluation and historical development of the form is not appropriately applied here by the District in that the Employer is fundamentally altering the instrument as it was developed by the Role of the Teacher committee.

An award for the Employer's proposal is not necessary to continue the process of evaluation. The parties still can continue the "Role of the Teacher Committee". If the Employer is given the award, there will be no longer a need for a Role of the Teacher committee.

The Association states that the Employer is altering the status quo on layoff proceedings. The existing method is to group teachers for layoff according to scores derived from the Role of the Teacher evaluation instrument. This system incorporates seniority points. A new Role of the Teacher program would not incorporate them. The Association asserts that though Board policy on layoff has not changed, the method has, and the working conditions have. If the Board had wanted status quo, it could have accepted the previous contract provision. The Board is proposing to have the latitude to continuously change layoff procedures. The District will have through its proposal achieved a position of having bargained over changes in layoff procedures, but having eliminated a duty to bargain over unilateral changes in the layoff procedure.

The Association states that no contract provision ever existed in this District on layoff which the Association voluntarily gave up, and the Association never gave up any contract language regarding seniority-based layoff procedures. Both parties are proposing changes which would govern layoff procedures also, and not just the Association.

B. District's Position Summarized. The District takes the position that the history of the development of the instrument of evaluation and selection for layoff is important to the resolution of the dispute and was achieved by voluntary collective bargaining. It cites Arbitrator Vernon to the effect that arbitrators should be reluctant to remove or change language items where they were the product of voluntary negotiations (Crawford County Deputies, Dec. No. 20451 (1983)).

The District notes that prior to 1979 tenured teachers were laid off by seniority. In 1979 the Board revised its policy to provide layoff which included qualifications, professional attitude and conduct, proper certification, professional competence, performance and experience and if the above were equal, then seniority would be applied. This policy came after a petition from 42 residents. The Board announced its intent to negotiate through bargaining a method to implement the policy, and also the Board announced it would prefer not to make a selection under the policy, but rather to have the staff self-regulate itself. This became the key issue of the Board, and the Association proposed alternatively to retain seniority.

In the 1979-82 agreement the parties reached a settlement where a leave of absence, the VIPER program, and job sharing would precede layoff with recall rights. There was added a memorandum of understanding with additional features spelled out on the layoff procedure, including an increase in payments under VIPER.

Thereafter the administration categorized teachers into "average" or "above average" for layoff purposes. The objection of the teachers was countered by the District administrator who said that the existing "Role of the Teacher" evaluation system would be used, that teachers would be permitted a role in the process, and that the teachers were assured of appropriate motives, good intentions and fairness.

The teachers protest resulted in an outside evaluation of the Role of the Teacher document. The document was reviewed by an outside firm from the perspective of "improvement" and "layoff availability determination."

The outside evaluator stated that the document had insufficient objective criteria and recommended its evaluation revision to be used for annual performance and goal setting by trained evaluators, and the teachers should be informed of the purposes, and that it be used for layoff purposes.

A committee of the administrator, two principals and three teachers was formed to work on the document. The document was reviewed to eliminate value-laden words and to emphasize the evidentiary aspect, and point scores were developed, using a "negative only" approach under which the teacher was to get full value unless the evaluator could justify a reduction. The Board approved this method in December 1982, but the teachers supported it only as a method to improve instruction but not for layoff.

Thereafter the Role of the Teacher committee met and the evaluators were trained. Many aspects of the document continue to be discussed. There was a high degree of support for the features of the document, but objection was raised by some teachers to the number of points given for seniority as this would tend to dominate over the performance of a superior classroom teacher. Further changes were precluded because of the mediation-arbitration process. However the Board continued to inform teachers of developments under the system as to notification, observation matters, rebuttal matters and so on.

The District has engaged in training the new principals who will be the evaluators. The evaluators when making their evaluations have accompanied them with written comments and examples, and the document has been revised to put space on it for administrator's comments.

The District argues that its method of analyzing evaluation scores is sound statistically and is responsive to concerns of the teachers. The District asserts that it attempted to address teachers' concerns about the use of seniority, but since the teachers insisted on strict use of seniority, the District found it fruitless to attempt to address problems through negotiation, and the District developed a revised method of analyzing evaluation scores. This method de-emphasizes the factor of "years of service" in the determination of qualifications, attitude, competence and performance, and also attempted to eliminate ranking based on strict numerical order. However experience as a factor would impact positively in ratings such as those dealing with parents and students.

Since the negative only evaluation system concentrates scores in a relatively narrow range, the Board has utilized the method of standard deviations to determine equality of consideration, and statistically the use of two standard deviations as an "equal" group produces proper population groupings. This method addresses the concern of the teachers.

The District asserts that it is unlikely that teachers will be laid off for several years, and the parties should have sufficient time to iron out problems within the system. The District cites the testimony of the business manager to this effect.

The District contends that it has attempted to address the concerns of the teachers and that its proposal should not be rejected on the grounds that it did not negotiate over these concerns, a factor which affected the arbitration award in a Nicolet arbitration.

The District rejects the Association exhibit which states that seniority results in the public interest being served. It states that this research by Professor Murnane is far from conclusive and also supports the District's position when it discusses problems caused by seniority-based layoffs, such as breaking staffing patterns and laying off of younger teachers more apt to develop and implement new ideas. Problems caused by seniority-based layoffs, according to Professor Murnane, are severe.

The District asserts that there is no enrollment uncertainty. The Individual Guidance Education program is being advocated by only one of five Board members. The District notes that reductions have occurred but without the necessity for layoff due to other options existing. The District argues that enrollment will be up, including enrollment in the four year kindergarten.

The District asserts that the conclusion that the Board anticipates a layoff and therefore is proposing this method is incorrect. The District proposed modification of the existing method only in response to the Association's demand to return to strict seniority.

The District asserts that its offer is more specific in its reference to the method of selecting teachers for layoff than the old contract. Under the old contract although the Role of the Teacher program document was utilized, now it is specifically mentioned. The District points to its method of determining equality under point scores. It states that the Role of the Teacher evaluation program is well known, and has considerable input by teachers, and it asserts that although changes may be made in the future, they will not be made without extensive discussion with the teachers. Teachers would have a right to file rebuttal statements, and require evidence on their performance to be given.

The District asserts that in developing the Role of the Teacher program, Association members knew it was to be used for layoff. The District also states that as to whether or not the teachers had points taken off for trivial matters, the principals nevertheless felt justified in their point deductions.

The District rejects the Association contention that the District offer departs more from the status quo and the Association's offer, but rather that the Association initiated the change in the status quo.

The District asserts that eliminating the points of service under its proposed plan allows greater use of seniority than before.

The District rejects the Association's contention that its proposal to allow the District to continue part-time programs in two schools completely negates seniority. This is not the intention of the District, but merely to achieve efficiency.

The District asserts that its position is the most reasonable. Even though there may be flaws in the method of scoring, it should not be scrapped. The Association however has been unreasonable in rejecting efforts to work out the flaws of the program.

C. Discussion. The ascertaining of the interests and welfare of the public needs to be addressed. The Board appears to be motivated by what it perceives to be a desire of the people of the community in having some kind of system in which qualifications and other conditions rather than seniority alone determine layoff; therefore it enacted a Board rule to this effect and has adhered to maintaining this principle, though modified somewhat by the Role of a Teacher evaluation document. The Board appears to be dissatisfied with the Role of the Teacher document thus far because of the weight seniority has in the scoring system, and it has proposed to introduce a policy wherein seniority has a role only after scores are determined without it. The teachers are opposed to any system other than the use of seniority in layoff for reasons enunciated earlier, but particularly because of the belief that the system will be used unfairly and perhaps vindictively, with the final end in view of effectively getting rid of the use of seniority at all.

First, the matter of which proposal alters the change in the status quo the most. The District relies strongly on the contention that the Association is proposing a change in the status quo, whereas at the most the Board is only proposing a modification of the status quo. The arbitrator is of the opinion that both parties are proposing a change in the status quo, but that the District offer proposal is the lesser of the two changes being

only a modification of the application of a policy. The policy of including other factors than seniority now exists in the system, and the District offer is an offer to modify it substantially, but to retain the principle. The Association offer amounts to a change to another basic principle, that of the use of seniority only. Thus the matter comes to whether there is a need for a change to another principle and policy.

The arguments for the need to change to another system, apart from the argument of comparability, revolve around the use of the Role of the Teacher evaluation program, which the Association asserts is subject to unfairness in its administration, with points being scored for trivial or vindictive reasons. The Association notes that the document itself is not part of the record and can be the subject of future infinite changes. The District counters by saying that it will use the document since the document is mentioned in the District proposal, and the District will continue to have teacher input.

On these matters, the arbitrator makes some observations based on the record.

The teachers are reluctant to work on a document which will result in how they are going to be discharged, and may not work on it in the future if they think their work will have no value. The methods of arriving at a layoff used and proposed by the District have caused anxiety among various teachers. The use of a layoff procedure other than seniority is likely to produce friction between teachers and administrators over point scores, and teachers may not in their self-evaluation even take off points against themselves. The use of a layoff procedure is likely to produce rivalry among teachers. The past use of the Role of the Teacher, as the document now stands, has produced some debatable deductions which have caused friction between teachers and administrators. The evaluation system as currently developed with a negative point system has not produced much of a spread which the application of two standard deviations to determine "equal" may alleviate somewhat. Nevertheless each point deducted is likely to be contested.

The conclusion from the above is that the flaws in the current system seem to be serious enough to cause such a problem among the teachers and administration that it would not be in the interest of the public to continue it. It would certainly appear that a large amount of time has been spent already on the subject by administrators and teachers, and the argument may be to end further consideration as unproductive for the public good.

Against such a view the interests of the school district public must be weighed. Here the public is demanding that its Board produce an evaluation system of some kind which could also be used for layoff as well as teacher improvement. Although this arbitrator has the perception that the Fox Point-Bayside public may be in error about the result of the implementation of a program using factors other than seniority as predominant in layoff, it seems undeniable that the public here wants such a system to prevail.

Looking at the matter however from a more general public interest viewpoint, would the continuation of a system to attempt to evaluate teachers on a qualifications basis have a public value? Here the answer must be in the affirmative if such a system performs accurately and fairly. The arbitrator therefore is of the opinion that the Fox Point-Bayside system should be continued as an expression of a policy which, if properly evolved, will serve a public interest more precisely if layoffs are required.

The current Fox Point-Bayside system has some conditions which cushion against a cruel and arbitrary use. These cushions included the use of voluntary retirements and job sharing. Evaluating the testimony, the arbitrator believes that there will be layoffs in the system, but the number is likely to be small. If a three year successor agreement is reached, the parties have some time to address the matter of how to develop a fairer system of evaluation than the present one, where a teacher's fate hangs on one observation and one incident during the observation.

The judgment of whether this current system should continue so that it might evolve compels the arbitrator to estimate the good faith of the District in developing a fair evaluation system with teacher input. The arbitrator believes that the District's several statements of good faith effort to include teachers' views and deep concerns in the development of an evaluation program to make it fair and equitable can be accepted. The arbitrator does not believe that the record supports the fear that the District wants to get rid of all use of seniority and to act arbitrarily and vindictively against its teaching staff.

Thus the arbitrator comes to the conclusion that the public interest beyond the confines of the District itself will be served by a continuation of the effort to evolve a new system of performance evaluation and qualification evaluation and to weigh these with seniority in staff reduction. He believes that this effort will prove or disapprove itself by the next contract period, when it can be subject for review by the parties. The risk to the teaching staff is not so great as to deny the continuance of the effort.

The concern of the Association needs to be addressed that the program on the Role of the Teacher which is used for evaluation is not stated in the contract and an award for the District will absolve the District from any necessity of consulting with the teachers on how the document will be changed, giving the District a unilateral right to do as it wishes. The arbitrator, in looking at the 1982-85 Memorandum and the current District proposal, believes that the District has narrowed its own options to act unilaterally by mentioning the existence of the Role of the Teacher program in its offer, and by giving repeated assurances of acting in good faith and seeking teacher input. It is true that the seeking of teacher input is not found in the District's formal offer, and here one must rely on the District's good faith to be fair and equitable.

As to the final paragraph in the District's offer that it is reserving the right to by-pass seniority and/or use a partial reduction, the arbitrator believes that this right is limited only to continuing a needed program, and therefore does not believe it supports complete freedom to by-pass seniority. However, it should be recognized that this paragraph like any paragraph in a contract may sometime be subjected to a grievance over the way the Board uses it. The arbitrator concludes that the danger to the use of seniority is not such that this paragraph overrides the other conclusions arrived at above.

XII. SUMMARY. Two factors must be weighed against each other in making a judgment on the matter in dispute. One is the preponderance of comparability in favor of the Association offer for the use of strict seniority in layoff. The other factor is the public interest, which favors the continuance of the modified system of evaluation involving "qualifications, professional attitude and conduct, properly certified, professional competence, performance and experience", which is the District's proposal. The arbitrator believes that the later factor is the weightiest and therefore makes the following award.

XIII. AWARD. The offer of the Fox Point-Bayside District shall be included in the 1982-85 agreement.

Frank P. Zeidler

FRANK P. ZEIDLER
MEDIATOR/ARBITRATOR

DATE November 16, 1985